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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Austen et al.**

Serial No.: **09/891,339**

Filed: **June 26, 2001**

For: **Method, Apparatus, and Program for Service Processor Surveillance with Multiple Partitions**

Group Art Unit: **2114**

Examiner: **Le, Dieu Minh T.**

Attorney Docket No.: **AUS920010329US1**

35525
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By: Michele Morrow
Michele Morrow

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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- Our return postcard.

A fee of $340.00 is required for filing an Appellant's Brief. Please charge this fee to IBM Corporation Deposit Account No. 09-0447. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Serial No. **09/891,339**	§	
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APPEAL BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal, filed in this case on September 27, 2004.

The fees required under § 41.20(B)(2), and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

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REAL PARTY IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines Corporation.

RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

STATUS OF CLAIMS

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-28

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims canceled: NONE
2. Claims withdrawn from consideration but not canceled: NONE
3. Claims pending: 1-28
4. Claims allowed: NONE
5. Claims rejected: 1-28

C. CLAIMS ON APPEAL

The claims on appeal are: 1-28

STATUS OF AMENDMENTS

An Amendment after Final Rejection was not filed. Therefore, claims 1-28 on appeal herein are as amended in the Response to Office Action filed April 13, 2004.

SUMMARY OF CLAIMED SUBJECT MATTER

A. CLAIM 1 - INDEPENDENT

The subject matter of claim 1 is directed to a method for service processor surveillance for a system having multiple partitions. The system is illustrated in **Figure 2**, and includes service processor **220** and partition operating systems **232, 234, 236** (page 7, lines 26-32). The method is illustrated in **Figure 3** and is generally described beginning on page 11, line 4 and extending to page 12, line 18. According to the invention, a service processor status request is received from one partition of a plurality of partitions, and a determination is made if a predetermined time period has elapsed (see page 11, lines 7-9, Step **302** in **Figure 3**). A surveillance test is then performed for the service processor if the predetermined time period has elapsed (see page 11, lines 9-12, Step **304** in **Figure 3**).

If the service processor is good, an official response for the surveillance test is updated (page 11, lines 15-17, Step **310** in **Figure 3**), and a status for the service processor is returned to the one partition of the plurality of partitions (page 11, lines 17-29, Steps **312-320** in **Figure 3**).

B. CLAIM 10 – INDEPENDENT

The subject matter of claim 10 is also directed to a method for service processor surveillance for a system having a plurality of partitions. The method is illustrated in **Figure 3** and is generally described beginning on page 11, line 4 and extending to page 12, line 18. According to the invention, a service processor status request is received from one partition of a plurality of partitions, and a determination is made if a predetermined time period has elapsed (see page 11, lines 7-9, Step **302** in **Figure 3**). A surveillance test is then performed for the service processor if the predetermined time period has elapsed (see page 11, lines 9-12, Step **304** in **Figure 3**). A status for the service processor is then returned to the one partition of the plurality of partitions (page 11, lines 15-29, Steps **310-320** in **Figure 3**).

C. CLAIMS 14 AND 23 – INDEPENDENT

Claim 14 is an apparatus claim counterpart to method claim 1, and claim 23 is an apparatus claim counterpart to method claim 10.

D. CLAIMS 27 AND 28 – INDEPENDENT

Claim 27 is a computer program product counterpart to method claim 1, and claim 28 is a computer program product counterpart to method claim 10.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. GROUND OF REJECTION 1 (Claims 1-6, 10-19, 23-28)

Claims 1-6, 10-19 and 23-28 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,065.139 (Mehta et al.).

B. GROUND OF REJECTION 2 (Claims 7-9, 20-22)

Claims 7-9 and 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,065,139 (Mehta et al.).

ARGUMENT

A. GROUND OF REJECTION 1 (Claims 1-6, 10-19, 23-28)

Claims 1-6, 10-19 and 23-28 stand finally rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,065.139 (Mehta et al.).

Mehta et al. (hereinafter Mehta) is directed to a method and system for monitoring computer system operations utilizing a service processor. In Mehta, a computer system is monitored by initiating surveillance of the computer system in system firmware when an architected function occurs in the operating system. The status of computer system operations is monitored based on a frequency of a pulse indicator from the firmware to the system processor.

The present invention is directed to a method and system for service processor surveillance for a system having multiple partitions, and addresses problems that may occur in a multiple partition environment. For example, in a multiple partition environment, each of the multiple partitions tries to monitor the status of the service processor, and problems may occur if more than one partition probes the surveillance byte at the same time or if a probe is made by a partition before the service processor has had a chance to respond to a previous probe. In the present invention, a service processor status request is received from one partition of a plurality of partitions; and, after a surveillance test is performed for the service processor, an official response for the surveillance test is updated and a status for the service processor is returned to the partition. In this way, each partition is able to maintain its own record of the status of the service processor.

In the Final Office Action, the Examiner states:

> This rejection is being applied for the same reasons set forth in the previous Office Action paper number 4, paragraph 4 mailed January 26, 2004.

Final Office Action dated June 30, 2004, page 2.

Accordingly, in the following Argument, reference is made to both the Office Action dated January 26, 2004, and the Final Office Action dated June 30, 2004.

In rejecting the claims, the Examiner states as follows:

As per claim 1:

Mehta explicitly teaches:

- A method for service processor surveillance [fig. 1, abstract, col. 1, lines 23-25] comprising:
- receiving a service processor status request from a first partition [fig. 1, col. 2, lines 8-10];
- performing a surveillance test for the service processor if the time period has elapsed [fig. 1, col. 2, lines 10-13 and col. 5, lines 8-12];
- updating an official response for the surveillance test [col. 2, lines 25-28 and col. 4, lines 16-18];
- returning a status for the service processor to the partition [col. 2, lines 16-17 and col. 4, lines 9-10].

Office Action dated January 26, 2004, page 3.

Claim 1 of the present application reads as follows::

1. A method for service processor surveillance for a system having multiple partitions, comprising:

receiving a service processor status request from one partition of a plurality of partitions;

determining if a predetermined time period has elapsed;

performing a surveillance test for the service processor if the predetermined time period has elapsed;

updating an official response for the surveillance test; and

returning a status for the service processor to the one partition of the plurality of partitions.

Initially, it should be noted that Mehta is not related to and does not disclose a method for "service processor surveillance for a system having multiple partitions", as recited in claim 1. Instead, Mehta is directed to a method for computer system surveillance using a service processor. The method is illustrated in **Figures 2** and **3** in Mehta, reproduced below for the convenience of the Board, and is described in detail in Col. 3, line 56 to Col. 4, line 20 as follows:

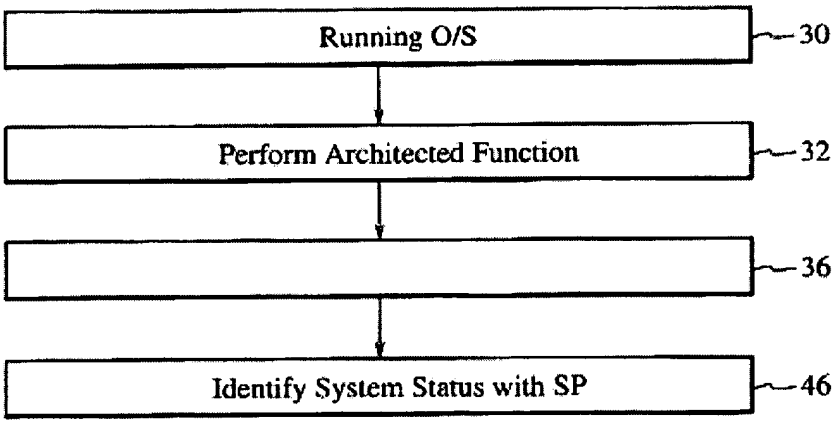

FIG. 2

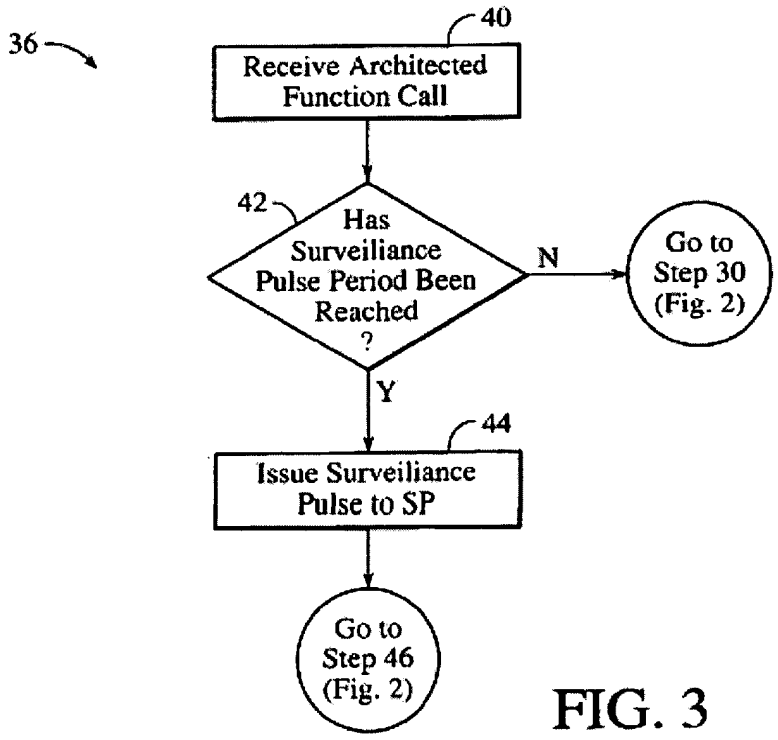

FIG. 3

As shown in **Fig. 3**, the surveillance activity commences with the calling of the architected function by the O/S **14** to the firmware **16** (step **40**). The firmware **16** then determines if a surveillance pulse period/'heartbeat' interval has been reached (step **42**). The surveillance pulse period preferably is a predetermined time period sufficient for allowing suitable system checks to occur, e.g., a one minute time period. If the surveillance period has not been reached, surveillance reporting is not required and operations continue with the running O/S **14** (step **30**). For example, the architected

function call may occur at a faster rate than is desired for issuing the surveillance signal. Thus, the firmware **16** waits until the appropriate surveillance pulse period has been reached, the firmware **16** issues a surveillance/'heartbeat' signal to the **SP 22** (step **44**). The 'heartbeat' suitably indicates that the system appears to be operating properly from the firmware **16** perspective, since the operating system **14** is providing the architected function appropriately.

Referring back to Fig. **2**, the process then continues with identification of the status of the system using the **SP 22** (step **46**). Thus, the **SP 22** responds to the 'heartbeat' **0** by returning any discovered errors to the firmware **16**. Preferably, the **SP 22** maintains an independent time base and checks that the "heartbeat" signals appear at the necessary frequency. If the "heartbeat" frequency falls outside the expected rate, the **SP 22** suitably executes a tailorable recovery policy, such as providing notification of the failure to a remote service location and/or automatically restarting the system. The communications mechanism **24** suitably acts as a transfer agent for the heartbeat transmission and error data return between the firmware **16** and SP **22**.

In Mehta, system firmware issues a surveillance/heartbeat signal to the service processor each time a surveillance pulse period is reached. The heartbeat indicates that the computer system appears to be operating properly from a firmware perspective. The service processor then responds to the heartbeat by returning any undiscovered errors to the firmware. If the heartbeat is not properly received by the service processor, a recovery policy is initiated.

Mehta, thus is not directed to a method for "service processor surveillance for a system having multiple partitions", but is directed to a method for computer system surveillance using a service processor.

Mehta also does not disclose "receiving a service processor status request from one partition of a plurality of partitions" as recited in claim 1. In rejecting claim 1, the Examiner refers to col. 2, lines 8-10 of Mehta as disclosing the step of "receiving a service processor status request from a first partition". Appellants respectfully disagree. Col. 2, lines 8-10 of Mehta states only "the operating system including a facility to make periodic calls to a hardware platform of the computer system to sample for events". This statement is not a disclosure of "receiving a service processor status request from one partition of a plurality of partitions" as recited in claim 1. Mehta contains no disclosure of receiving a service processor status request, and certainly does not disclose "receiving a service processor status request from one partition of a plurality of partitions".

Mehta also does not disclose "updating an official response for the surveillance test" as recited in claim 1. In rejecting the claims, the Examiner refers to col. 2, lines 25-28 and col. 4, lines 16-18 of Mehta as disclosing this feature. Col. 2, lines 22-30 of Mehta states as follows:

> The computer system further includes a firmware mechanism supported by the processing mechanism, the firmware mechanism receiving the architected function call and subsequently issuing a surveillance signal when a surveillance period has been satisfied. In addition, a service processor is coupled to the processing mechanism, the service processor receiving the surveillance signal and responding to the surveillance signal to indicate system malfunctions.

This recitation states only that the service processor responds to a surveillance signal when there is a system malfunction. There is no disclosure of any kind of updating an official response for a surveillance test for a service processor. Similarly, Col. 4, lines 16-18 reproduced above, states only that notification of a system failure may be provided to a remote service location. Such a statement also does not constitute a disclosure of "updating an official response for the surveillance test" that has been performed for the service processor.

In the Final Office Action, the Examiner further refers to col. 4, lines 25-28 and col. 3, line 56 through col. 4, line 20 as disclosing "updating an official response for the surveillance test". Col. 4, lines 25-28 of Mehta reads as follows:

> Preferably, at each system initialization/initial program load (IPL), the SP **22** enforces the stored surveillance policy settings and begins monitoring system operation.

With respect to Col. 3, line 56-Col. 4, line 20, reproduced above, the Examiner states:

> - surveillance activity commences with the calling of the architecture function, determining heartbeat signal, checking heartbeat signal, executing recovery, notifying failure, transferring agent for heartbeat transmission, etc., [col. 3, lines 56 through col. 4, lines 20].

Final Office Action dated June 30, 2004, page 5.

Appellants submit that these recitations in Mehta are not a disclosure of "updating an official response for the surveillance test" as required by claim 1. As discussed previously, the recitations generally describe a procedure in which system firmware issues a surveillance/heartbeat signal to a service processor each time a surveillance pulse period is reached. The heartbeat indicates that the computer system appears to be operating properly from a firmware perspective. The service processor then responds to the heartbeat by returning any undiscovered errors to the firmware. If the heartbeat is not properly received by the service processor, a recovery policy is initiated. At no time is an official response for a surveillance test updated.

Mehta also does not disclose "returning a status for the service processor to the one partition of the plurality of partitions" as recited in claim 1. The Examiner refers to Col. 2, lines 16-17 and Col. 4, lines 9-10 of Mehta as disclosing this step. Col. 2, lines 13-17 states:

> Further, the method includes issuing a surveillance signal to the service processor if the surveillance interval is above the predetermined interval, and responding to the surveillance signal by the service processor to indicate system malfunction.

In Col. 4, lines 9 to 10, reproduced above, Mehta states only that the service processor responds to the heartbeat by returning any discovered errors to the firmware.

These recitations are not a disclosure of "returning a status for the service processor to the one partition of the plurality of partitions" as recited in claim 1. As indicated above, there appears to be no disclosure in Mehta regarding receiving a service processor status request, and there is also no disclosure in Mehta regarding returning a status for the service processor to one partition of a plurality of partitions.

Furthermore, in the Final Office Action, the Examiner additionally states:

> Mehta clearly demonstrated applicant's limitation. It is intuitively and inherently that the returning capability must apply therein to close the loop in service processor surveillance process in order for the system to conduct reading/writing of the surveillance information, etc...

Final Office Action dated June 30, 2004, page 5.

Appellants respectfully disagree with the Examiner's conclusions. As described previously, in a system that includes a plurality of partitions, problems may occur if more than one partition probes the surveillance byte at the same time or if a probe is made by a partition before the service processor has had a chance to respond to a previous probe. In the present invention, after a service processor status request is received from one partition of a plurality of partitions; and, after a surveillance test is performed for the service processor, an official response for the surveillance test is updated and a status for the service processor is returned to the partition. In this way, each partition of the plurality of partitions is able to maintain its own record of the status of the service processor.

Mehta is not specifically directed to a system having a plurality of partitions, and does not recognize the problems in such a system that are solved by the present invention. Mehta is simply directed to a method that uses a service processor for monitoring computer system operations, and is not directed to a method for service processor surveillance for a system having multiple partitions.

For at least all of the above reasons, claim 1 is not anticipated by Mehta, and it is respectfully requested that the Examiner's Final Rejection of claim 1 be reversed.

Claims 2-6 depend from and further restrict claim 1, and are also not anticipated by Mehta, at least by virtue of their dependency.

Independent claims 14 and 27 recite limitations generally similar to claim 1, and those claims, together with claims 15-19 that depend from claim 14, are also not anticipated by Mehta for at least the reasons discussed above.

Independent claim 10, 23 and 28 are also not anticipated by Mehta for substantially the same reasons as discussed above with respect to claim 1, and it is respectfully requested that the Examiner's Final Rejection of claims 10, 23 and 28 also be reversed.

Claims 11-13 depend from claim 10 and claims 24-26 depend from claim 23, and are also not anticipated by Mehta, at least by virtue of their dependency.

Therefore, Appellants submit that claims 1-6, 10-19 and 23-28 are not anticipated by Mehta, and reversal of the Examiner's Final rejection of those claims is respectfully requested.

B. GROUND OF REJECTION 2 (Claims 7-9, 20-22)

The Examiner has rejected claims 7-9 and 20-22 under 35 U.S.C. § 103(a) as being unpatentable over Mehta. In the Final Office Action, the Examiner states:

> This rejection is being applied for the same reasons set forth in the previous Office Action paper number 4, paragraph 7 mailed January 26, 2004.

Final Office Action dated June 30, 2004, page 6.

Accordingly, in the following Argument, reference is made to both the Office Action dated January 26, 2004, and the Final Office Action dated June 30, 2004.

With respect to claims 7-9 and 20-22, the Examiner concedes that Mehta does not disclose comparing the official response to a partition official response, and setting the partition official response to be equal to the official response. The Examiner contends, however, that it would be obvious to do so in view of teachings in Mehta. This rejection is respectfully traversed.

There is no disclosure in Mehta that would, in any way, suggest modifying the method described therein to include steps of comparing an official response to a partition official response, and of setting the partition official response to be equal to the official response if the comparison shows they are not equal. There is no partition official response of any kind in Mehta, and there is no mechanism in Mehta for comparing an official response to a partition official response.

In the Final Office Action, the Examiner states:

> It would have been obvious to an ordinary skill in the art at the time of the invention to realize the Mehta's architecturing surveillance function as being the comparing and setting the official response and the partition official response in supporting the system for surveillance of computer system operations.
>
> This is because Mehta does reply on the pulse period or hearbeat intervals or the "responses" to determining whether the service processor performed correctly. This is further obvious to apply the Mehta's system initialization/initial program along with the stored surveillance policy setting [col. 4, lines 25-30], the computer system operation, more specifically, the service processor can support the surveillance system

uninterruptedly to enhancing the resource sharing, processing availability and performance throughput.

Final Office Action dated June 30, 2004, pages 7 and 8.

Appellants respectfully disagree with the Examiner's conclusions. As described previously, in the present invention, after a surveillance test is performed for the service processor, an official response for the surveillance test is updated and a status for the service processor is returned to the partition. In this way, each partition of the plurality of partitions is able to maintain its own record of the status of the service processor. Mehta is not directed to a partitioned system and does not recognize the problem in a partitioned system solved by the present invention. There is no mechanism disclosed in Mehta to enable comparing an official response to a partition official response, and of setting the partition official response to be equal to the official response if the comparison shows they are not equal, nor would Mehta have any reason to provide such a mechanism. Appellants submit that the Examiner is improperly using Appellants' own disclosure as a basis of rejecting claims 7-9 and 20-22, and that there is no disclosure in Mehta that would lead one to modify Mehta to achieve the present invention as recited in claims 7-9 and 20-22 in the absence of Appellants' own disclosure.

Claims 7-9 and 20-22 should, accordingly, be allowable in their own right as well as by virtue of their dependency from allowable claims, and it is respectfully requested that the Board reverse the Examiner's Final Rejection of claims 7-9 and 20-22.

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CLAIMS APPENDIX

The text of the claims involved in the appeal are:

1. A method for service processor surveillance for a system having multiple partitions, comprising:

receiving a service processor status request from one partition of a plurality of partitions;

determining if a predetermined time period has elapsed;

performing a surveillance test for the service processor if the predetermined time period has elapsed;

updating an official response for the surveillance test; and

returning a status for the service processor to the one partition of the plurality of partitions.

2. The method of claim 1, wherein the step of performing the surveillance test comprises:

reading surveillance information; and

determining whether the service processor has written to the surveillance information.

3. The method of claim 2, wherein the step of performing the surveillance test further comprises writing to the surveillance information.

4. The method of claim 2, wherein the surveillance information comprises a surveillance byte in nonvolatile random access memory.

5. The method of claim 1, further comprising:

performing error handling if the service processor is in error.

6. The method of claim 1, wherein the status comprises the official response.

7. The method of claim 1, further comprising:

comparing the official response to a partition official response associated with the one partition; and

setting the partition official response to be equal to the official response if the official response is not equal to the partition official response.

8. The method of claim 7, wherein the status comprises the partition official response.

9. The method of claim 7, wherein the status comprises a neutral value if the official response is equal to the partition official response.

10. A method for service processor surveillance for a system having multiple partitions, comprising:

receiving a service processor status request from one partition of a plurality of partitions;

determining whether a predetermined time period has elapsed;

performing a surveillance test for the service processor if the predetermined time period has elapsed; and

returning a status for the service processor to the one partition of the plurality of partitions.

11. The method of claim 10, wherein the step of performing the surveillance test comprises:

reading surveillance information; and

determining whether the service processor has written to the surveillance information.

12. The method of claim 11, wherein the step of performing the surveillance test further comprises writing to the surveillance information.

13. The method of claim 11, wherein the surveillance information comprises a surveillance byte in nonvolatile random access memory.

14. An apparatus for service processor surveillance for a system having multiple partitions, comprising:

receipt means for receiving a service processor status request from one partition of a plurality of partitions;

determining means for determining if a predetermined time period has elapsed;

surveillance means for performing a surveillance test for the service processor if the predetermined time period has elapsed;

update means for updating an official response for the surveillance test; and

return means for returning a status for the service processor to the one partition of the plurality of partitions.

15. The apparatus of claim 14, wherein the surveillance means comprises:

reading means for reading surveillance information; and

determination means for determining whether the service processor has written to the surveillance information.

16. The apparatus of claim 15, wherein the surveillance means further comprises means for writing to the surveillance information.

17. The apparatus of claim 15, wherein the surveillance information comprises a surveillance byte in nonvolatile random access memory.

18. The apparatus of claim 14, further comprising:

means for performing error handling if the service processor is in error.

19. The apparatus of claim 14, wherein the status comprises the official response.

20. The apparatus of claim 14, further comprising:

means for comparing the official response to a partition official response associated with the one partition; and

means for setting the partition official response to be equal to the official response if the official response is not equal to the partition official response.

21. The apparatus of claim 20, wherein the status comprises the partition official response.

22. The apparatus of claim 20, wherein the status comprises a neutral value if the official response is equal to the partition official response.

23. An apparatus for service processor surveillance for a system having multiple partitions, comprising:

receipt means for receiving a service processor status request from one partition of a plurality of partitions;

means for determining whether a predetermined time period has elapsed;

surveillance means for performing a surveillance test for the service processor if the predetermined time period has elapsed; and

return means for returning a status for the service processor to the one partition of the plurality of partitions.

24. The apparatus of claim 23, wherein the surveillance means comprises:

reading means for reading surveillance information; and

determination means for determining whether the service processor has written to the surveillance information.

25. The apparatus of claim 24, wherein the surveillance means further comprises means for writing to the surveillance information.

26. The apparatus of claim 24, wherein the surveillance information comprises a surveillance byte in nonvolatile random access memory.

27. A computer program product, in a computer readable medium, for service processor surveillance for a system having multiple partitions, comprising:

instructions for receiving a service processor status request from one partition of a plurality of partitions;

instructions for determining if a predetermined time period has elapsed;

instructions for performing a surveillance test for the service processor if the predetermined time period has elapsed;

instructions for updating an official response for the surveillance test; and

instructions for returning a status for the service processor to the one partition of the plurality of partitions.

28. A computer program product, in a computer readable medium, for service processor surveillance for a system having multiple partitions, comprising:

instructions for receiving a service processor status request from one partition of a plurality of partitions;

instructions for determining whether a predetermined time period has elapsed;

instructions for performing a surveillance test for the service processor if the predetermined time period has elapsed; and

instructions for returning a status for the service processor to the one partition of the plurality of partitions.

EVIDENCE APPENDIX

There is no evidence to be presented.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings.